IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.856 OF 2007

Subhash Amolakchand Gandhi ..Appellant

V/s.

Jawahar V. Muchhala ..Respondent

Mr.P.P.Chavan for the appellant
Mr.Vineet B. Naik i/b. Dhruv Liladhar & Co. for the respondent

CORAM : SMT.R.S.DALVI, J.

DATE : 16TH APRIL, 2007

P.C.

1. The order which is impugned is in the suit filed in the City Civil Court, Bombay for enforcement of convenant of restriction of height of the building and for the ancillary relief. By the Judgment and Order dated 9th November, 2005 the learned Judge, City Civil Court, Mumbai decided that the preliminary issue relating to the pecuniary jurisdiction of the Court would be tried along with all other issues which were by then settled. Parties were directed to produce the original documents and list of witnesses on the

adjourned date and complete all pre-trial formalities. The suit came to be adjourned till 24th November, 2005.

2. On 24th November, 2005 as plaintiff did not comply with the directions for proceeding with the suit, the learned Judge rightly dismissed the suit under Order 17 Rule 3 of the C.P.C.

3. The dismissal is technically correct. The dismissal is due to the default of the plaintiff himself. The trial Court could have proceeded with the suit but the plaintiff due to his own default failed to proceed. If the plaintiff desires to be heard on merits he must therefore, pay costs thrown away for the date fixed for the trial. Hence, the following order.

O R D E R

a) On the plaintiff paying Rs.10,000/- as costs Suit No.6880 of 2000 of the City Civil Court,

Mumbai shall be restored to file and be heard as per directions of the learned Judge passed on 9th November, 2005. The appeal is disposed of accordingly.

(**SMT.R.S.DALVI, J.**)